HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ Petition No. 165 (M/S) o5:

Shiv Singh Bora S/o Sri Mangal Singh Bora,
R/o vill- Paye, Patti Bichla Katyoor,
Tehsil- Garur, district Bageshwar. ----Petitioner.

Versus

1. Addl. Commissioner, Kumaon Mandal,
   Nainital
2. Hira Singh,
3. Kailash Chandra Singh,
4. Nandan Singh, all sons of late Mahendra Singh,
   village Daonai, Patti Bichal Katyoor,
   Tehsil Garur, district Bageshwar,
5. Naveen Chandra S/o Late Parmanand,
   vill-Paye, Patti-Bichla Katyoor,
   Tehsil Garur, district Bageshwar. ----Respondents.

Mr. M.C. Kandpal, learned, sr. counsel for the petitioner,
Ld. Standing Counsel for respondents/State.
Sri Rajesh Joshi, learned counsel for respondent nos. 2,3,4.

Hon'ble M.M. Ghildiyal, J.

Heard Sri M.C. Kandpal, learned Sr. Counsel for the petitioner, learned Standing Counsel for the State/respondent no. 1 and Sri Rajesh Joshi, learned counsel for respondent nos. 2,3, & 4.

2. By means of this writ petition, the petitioner has prayed for the following reliefs:-

(i) Issue a writ order or direction in the nature of certiorari for quashing the order dated 22.12.2004 passed by the Addl. Commissioner (Kumaon Mandal) Nainital passed in Revision no. 168 (03-04)/2(04-05) is annexed as annexure no. 4.

(ii) Issue a writ order or direction which this Hon'ble Court may think deem fit and proper in the circumstances of the case.

(iii) Award the cost.

3. The facts of the case are that the petitioner purchased 1/3rd portion of Plot no. 601 situated at village Paye, Patti Bichla

Katyoor, Tehsil Garur, district Bageshwar from the respondent no.2, namely, Sri Hira Singh by a registered sale-deed. The name of the petitioner was mutated on the revenue records. The respondent nos. 3 filed a J.S.S. suit against the petitioner for recovery of the rent and ejectment before the Judge Small Cause Court/ Civil Judge (Sr. Div.), Almora, which was dismissed on 10.12.1998. The respondent nos. 2 to 4 preferred a revision before the District Judge, Almora against the order dated 10.12.1998 passed by the Civil Judge (Sr. Div.), Almora. The said revision was also dismissed on 16.08.1999. Against the order of the District Judge a writ petition no. 48614 of 1999 was filed by the respondent nos. 2 to 4, which has also been dismissed on 16.04.2003 by this Court.

4. The respondent nos. 2 to 4 has thereafter filed mutation suit no. 9/188/2003-04 to which the petitioner has filed his objection, however the Tehsildar, Bageshwar has passed order on 31.01.2004 for Mutation in the names of the respondents nos. 2,3 & 4. Therefore, the petitioner has filed Mutation Appeal no. 3/2003-04 before the Assistant Collector, Bageshwar , who after quashing the order dated 31.01.2004 passed by the Tehsildar, has remanded the matter back vide its order dated 09.07.2004. Aggrieved by order dated 09.07.2004, the respondents have filed revision no. 168 (03-04)/2 (04-05) u/s 219 of L.R. Act 1991 before the Addl. Commissioner (Kumaon Division), Nainital who on 22.12.2004 passed an order to maintain status-quo in regard to the property in depute, which is the order impugned in this writ petition.

5. Submission of the learned counsel for the petitioner is that the mutation proceedings are summary in nature and the learned Addl. Commissioner has erred in passing the Status-quo order, because he has ignored the entries of the revenue records, as the petitioner's name has already been mutated on the revenue records.

6. On the other hand, learned counsel for the respondents has submitted that a writ under Article 226 is not, at all, maintainable against the mutation proceedings.

7. At this stage, learned counsel for the petitioner has prayed that the respondent no. 1/ Addl. Commissioner may be directed to decide the revision no. 168 (03-04)/2(04-05) which is pending before him.

8. Keeping in view the aforesaid facts and circumstances, and without entering into merits of the case. I direct the Addl. Commissioner (Kumaon Division) to decide the revision no. 168 (03-04)/2(04-05) as expeditiously as possible, at any rate, within a period of two months from the date of production of a certified copy of this order.

9. With this direction, the writ petition is finally disposed of.

(M.M. Ghildiyal, J.)

April 24, 2006
NCM: